

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DANIEL HORACEK,

Plaintiff,

v.

Case No. 07-13822

DERRICK WILSON,
LIEUTENANT ATKINS, CAPTAIN WALLACE,
SISTER PEGGY DEVANEY, OAKLAND
COUNTY JAIL ADMINISTRATOR, OAKLAND
COUNTY JAIL CLASSIFICATION DEPARTMENT,
MARY, and JOHN DOES,

HONORABLE AVERN COHN

Defendants.

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**ORDER
AFFIRMING MAGISTRATE JUDGE'S ORDER
AND
DENYING PLAINTIFF'S MOTION TO AMEND COMPLAINT**

I.

This is a prisoner civil rights case under 42 U.S.C. § 1983. Plaintiff is proceeding pro se and in forma pauperis (IFP). Plaintiff names Derrick Wilson, Lieutenant Atkins, Captain Wallace, Sister Peggy Devaney, Oakland County Jail Administrator, Oakland County Jail Classification Department, and Mary (last name unknown), along with John Does as defendants. Plaintiff raised a host of claims regarding his incarceration at the Oakland County Jail (OCJ) from June 24, 2005 through July 6, 2006 as a pre-trial detainee.¹ The case has been referred to a magistrate judge for pre-trial proceedings and before whom defendants Atkins, Wallace, Devaney, Oakland County Jail

¹Plaintiff is now on parole.

Administrator, Oakland County Jail Classification Department filed a motion for summary judgment. The Court adopted the magistrate judge's report and recommendation (MJRR) in part. Only plaintiff's First Amendment § 1983 claim and statutory claim regarding the provision of Kosher meals continue. Plaintiff was also directed to file a supplemental paper regarding this claim within thirty (30) days. See Order filed March 30, 2009.

After defendants' motion for summary judgment was filed, plaintiff filed a motion to amend his complaint to add defendants. The magistrate judge issued an order recommending that the motion be denied. Before the Court are plaintiff's objections to the order, to which defendants have responded.

II.

The magistrate judge did not err in denying plaintiff's motion to amend. The Court has reviewed the proposed amended complaint, plaintiff's objections, and defendants' response. As explained in defendants' response, with the exception of Sheriff Michael Bouchard, none of the defendants plaintiff seeks to add pertain to his religious diet claim and there is no basis for adding Bouchard to this claim. Moreover, as to the dismissed claims (ADA, housing, wearing of yarmulke), the addition of new defendants would be futile. In other words, the new defendants do not alter the Court's analysis and conclusion that those claims fail. Finally, as noted in the order, plaintiff's motion to amend is untimely.

III.

Accordingly, the order is AFFIRMED as the findings and conclusions of the Court, as supplemented above. Plaintiff's motion to amend complaint is DENIED.

SO ORDERED.

s/Avern Cohn
AVERN COHN
UNITED STATES DISTRICT JUDGE

Dated: May 4, 2009

I hereby certify that a copy of the foregoing document was mailed to Daniel Horacek, #218347, 951 Indianwood Road, Lake Orion, MI 48362 the attorneys of record on this date, May 4, 2009, by electronic and/or ordinary mail.

s/Julie Owens
Case Manager, (313) 234-5160